

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR THE
HUMBOLDT BAY REPOWERING PROJECT
BY PACIFIC GAS AND ELECTRIC COMPANY**

DOCKET NO. 06-AFC-7
(AFC ACCEPTED 11/08/06)

COMMITTEE ORDER

This Order responds to a May 17, 2007, petition filed by Pacific Gas & Electric Company (PG&E) asking the Committee to order bifurcation or division of the California Energy Commission staff's (Staff) analysis documents and to issue a revised scheduling order for this case (Petition). This **Order** denies the Petition.

I. Background

On May 11, 2007, Staff filed its *Status Report 3* as well as a letter to the Project Development Manager at PG&E. Both documents identify potentially significant Air Quality and Public Health issues related to the Humboldt Bay Repowering Project (HBRP). Staff stated that its concerns are shared by the California Air Resources Board (ARB) and by the North Coast Unified Air Quality Management District (District). PG&E disputes Staff's position and on May 14, 2007, requested Staff bifurcate its analysis document so that work in most technical areas could proceed, while the parties continue to address air quality and public health matters on a parallel path. Staff declined to bifurcate and PG&E filed its May 17th Petition asking the Committee to direct Staff to provide a Preliminary Staff Assessment (PSA) on the majority of subject areas which are *not* affected by the parties' disagreements on air quality and public health matters.

By Notice of Public Hearing issued May 24, 2007, the Committee directed Staff to respond to the PG&E Petition and set a hearing on the matter for June 4,

2007. This Committee Order is based on the written filings of PG&E, Staff, and the California Coastal Commission (CCC), as well as oral arguments made at the June 4th hearing.

II. Discussion

PG&E filed its Petition pursuant to Commission regulations which authorize the Presiding Member to rule on any petition concerning the proceedings and to set and modify the proceeding schedule. [20 Cal. Code of Regs., Sections 1716.5, 1709.7(c).] The courts allow bifurcation of a proceeding for convenience or to avoid prejudice where doing so would expedite a case. The moving party has the burden of proving that bifurcation will promote judicial economy and will avoid inconvenience or prejudice to the parties.

We believe that PG&E has not met its burden. Its Petition requests bifurcation of the Staff analysis before publication of the PSA. While the Commission has on occasion bifurcated power plant cases in the past, the practice is not routine and to our knowledge, has never been initiated *before* a PSA was issued. We are reluctant to begin carving up this, or any, case at such an early point in the proceeding. Furthermore, it is clear from statements made on the record at the June 4th hearing that all the relevant agencies are still communicating with PG&E and willing to work towards resolution of issues. Thus, while we understand Applicant's concern with the present uncertainty of when the air district will issue its Preliminary Determination of Compliance (PDOC), we see no evidence of "foot-dragging" or unnecessary delay which would compel our intervention at this time. If at some future time the requisite flow of information is impeded by any party to this proceeding, that impediment should be promptly brought to our attention.

In addition, the CCC voiced concerns about PG&E's proposed approach both in a letter to this Committee dated May 30, 2007, and in statements made on the

record at the June 4th hearing. The CCC stated that it plans to submit a single, comprehensive report as required by statute. [Pub. Resources Code, § 30413(d).] To do so, the CCC would wait for Staff's complete analysis of a relatively final design of the proposed project. Thus, if portions of the Staff analysis concerning air quality and public health were bifurcated and presented later, the CCC's critical 30413(d) report would likely be delayed. Because the Committee needs the 30413(d) report among the major inputs from sister agencies prior to evidentiary hearings in this case, any step that could delay CCC input would not help but rather would hinder the efficiency of this case.

No party disputes the importance of the HBRP to the north coast region of the state. Furthermore, we acknowledge the many potential benefits of the project. However, at this point in time we believe that PG&E's Petition is not necessary to improve the flow of information and analysis in the case, and that in fact it poses the risk of delaying our final decision. For these reasons the Petition is **DENIED**.

Dated June 6, 2007, at Sacramento, California.

Original Signed by
JOHN L. GEESMAN
Commissioner and Presiding Member
Humboldt AFC Committee

Original Signed by
JEFFREY D. BYRON
Commissioner and Associate Member
Humboldt AFC Committee